

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
ENERGY FACILITY SITING BOARD**

**In Re: INVENERGY THERMAL DEVELOPMENT)
LLC’S APPLICATION TO CONSTRUCT THE) Docket No. SB-2015-06
CLEAR RIVER ENERGY CENTER IN)
BURRILLVILLE, RHODE ISLAND)**

**OBJECTION OF INVENERGY THERMAL DEVELOPMENT LLC
TO THE CONSERVATION LAW FOUNDATION’S MEMORANDUM
OF LAW PERTAINING TO RELEVANCE OF CROSS-EXAMINATION**

Now comes Invenergy Thermal Development LLC (“Invenergy”) and hereby objects to the Conservation Law Foundation’s (“CLF”) so-called Memorandum of Law (“Memorandum”) allegedly “pertaining to relevance of cross-examination seeking to impact Invenergy’s credibility.” Memorandum at 1. Invenergy objects to the “Memorandum” as it is an unauthorized and impermissible filing intended to unfairly prejudice the testimony of one of Invenergy’s witnesses.

Moreover, it is self-evident that CLF’s inappropriate “Memorandum” is nothing more than an effort to foist another supplemental and unauthorized opening statement on this Board with assertions regarding what CLF “intends to prove”, etc. This Board has not asked the parties to submit additional opening statements. On the contrary, this Board specifically designated April 26, 2018 as the date and time for all counsel, including CLF’s counsel, to make their opening statements.¹ CLF now tries to insert further argument, this time in the guise of a written “memorandum”, in an ill-conceived effort to launch an *ad hominem* attack against Invenergy. Even worse, CLF engages in this disingenuous effort without even seeking this Board’s leave to do so, in violation of EFSB Rule 1.17 (requiring a written filing, with reasons articulated, that requests the Board to take any specific action). Indeed, CLF’s “Memorandum” does not even

¹ CLF (and all Parties) presented opening statements to the Board just under a year ago, on April 26, 2018.

request that this Board take any action. The Memorandum should be stricken on this basis alone.

CLF (and all Parties) will have an opportunity to present further argument (and legal analysis) in their post-hearing briefs, including whatever CLF believes it has been able “to show through its cross-examination of Mr. Niland . . .” But this is neither the time nor the proper format to engage in that effort. Rather, CLF’s filing is nothing more than an indecorous attempt to file additional and impermissible written argument intended to taint the EFSB process during the pendency of Mr. Niland’s testimony.

Finally, Invenergy strongly objects and disagrees with each and every assertion made in the remaining paragraphs of the “Memorandum,” except the obvious fact that credibility of all witnesses will be assessed by this Board, among many other issues. This Board needs nothing from CLF to remind it of its responsibilities.

For all these reasons, Invenergy requests that the Board strike CLF’s “Memorandum” from the record and direct CLF to cease this type of impermissible filing going forward.²

² CLF’s *ex parte* March 22, 2019 correspondence to the EFSB is another example of CLF’s improper filings.

Respectfully submitted,
INVENERGY THERMAL DEVELOPMENT LLC
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Dated: March 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, I delivered a true copy of the foregoing document to the Energy Facilities Siting Board via electronic mail to the parties on the attached service list.

/s/ Alan M. Shoer